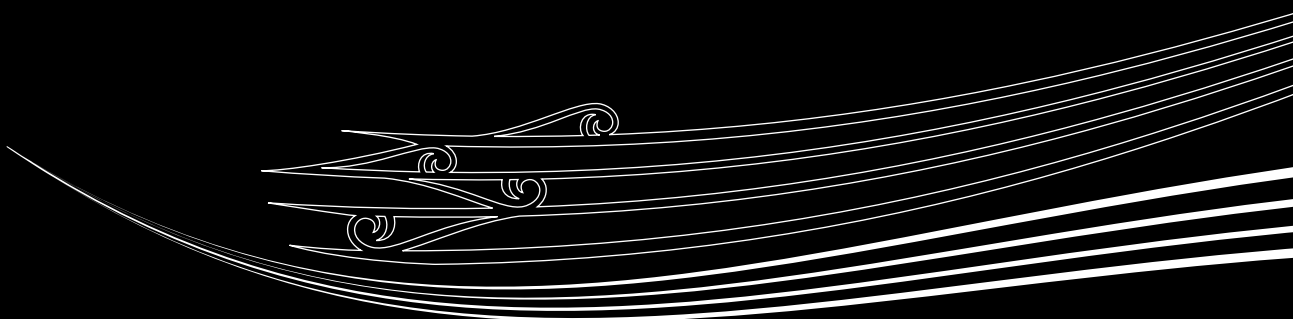


“BODY-SNATCHING”:  
CHANGES TO CORONERS LEGISLATION  
AND POSSIBLE MĀORI RESPONSES

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## Abstract

The term body-snatcher has enjoyed a renaissance in the media recently, as various Māori have moved to reclaim their deceased relations. From a Māori perspective, the claiming of bodies has nothing to do with body-snatching, a term that referred to episodes in the West. Indeed, Māori may see some laws themselves as instruments that snatch the body, in contravention of Māori customs. One of these laws, the Coroners Act 2006, may have made some progress by quietly acknowledging these customs in many ways, but that is merely the start of a greater dialogue between Māori and the Crown in relation to proper Māori respect of the dead body.

## Introduction

The media and public incandescence surrounding the 2007 events of body-snatching, a term which first gained currency in relation to the taking or disinterment of a body for anatomical research in 18th century Britain and which has now been remoulded to fit the Māori practice of claiming a body, revealed a dangerous assumption that cultures appropriate a dead body for the same reasons. At the same time as the specific incidents of body-snatching were unwinding, the Coroners Act 2006 came into force. While earlier Māori concerns about the nature of this amendment generally, and of antecedent legislation more specifically, as instruments capable of snatching bodies have been expressed, the Coroners Act 2006 passed into the public domain with complete equanimity.

In this article I seek to address the wider discursive<sup>1</sup> connotations and the historical contexts of body-snatching in the West. What emerges is a recognition that body-snatching has been occurring in the West for millennia. With legislation introduced in the early 19th century in the United Kingdom and the United States to discourage body-snatching in its crudest forms, the practice of body-snatching was meant to have been put to rest. However, legislation serves the culturally dominant, and has acted to define what body-snatching is and what the legalized retention of the dead body is. In Māori eyes, although an improvement on its antecedent, the provisions of the Coroners Act 2006 may still chime with *legalized* body-snatching but body-snatching nonetheless, especially as the Act does not reflect a respect for the sacred nature of the body.

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1. Foucault (1978:100-101) provides an explanation for the usefulness of discourse, even when it appears to be solely destructive:

... discourses are not once and for all subservient to power or raised up against it, any more than silences are. We must make allowances for the complex and unstable process whereby discourse can be both an instrument and an effect of power, but also a hindrance, a stumbling block, a point of resistance and a starting point for an opposing strategy. Discourse transmits and produces power; it reinforces it, but also undermines it and exposes it, renders it fragile and makes it possible to thwart it.

The use of the term 'body-snatching' by the media may therefore provide us with the impetus to consider our current language and practice dealing with the dead body in relation to colonised discourse and practice. In an almost contrary sense, then, wide use of the term 'body-snatching' allows us to theorise widely around dominance and rejuvenation of new forms of knowledge. Our traditional descriptions may also be able to thrive unseen, while the dominant term is being indiscriminately used.



## The rise of the “body-snatchers”: media coverage

The information that most of us are presented with dealing with the recent body-snatching controversies is promulgated through the media. Unless we are part of the affected families then it is unlikely that we will have a full grasp of the events. The media began to publicize the events around James Takamore after his body had been removed from a Christchurch marae (meeting complex, where the body is laid before burial) in August 2007, with an evident bias towards his wife’s experience rather than that of his extended family. An article, published in the New Zealand Herald on 21 August 2007, quoted the wife’s sentiments directly, but only indirectly reported what a representative of the extended family had to say (Family row sees body taken before funeral, 2007). The matter was merely reported as being subject to Māori protocol. A similar preference of the feelings of the widow emerged in a subsequent article in the New Zealand Herald on 22 August 2007, this time, however, with a direct quote from Takamore’s sister, in which she describes the need for him to be returned to his marae in Kutarere: ‘... his [umbilical] cord is here, we can’t stretch it to the South Island.’ (Burial defies court order, 2007).

It was not until 24 August 2007 that the term “body-snatcher” was used in the New Zealand Herald; together with some poems composed by Jim Hopkins (2007) which favoured the position of the immediate family, the title read “Jim Hopkins: Body Snatchers delight! Police have fled the fight.” This article, on the one hand, dealt with the bereft immediate family and, on the other, the apparently devious and primitive nature of the extended family. Thus “body-snatcher[s]” was utilized in the same space and breath as phrases as “Rousseau’s noble savage.” The significance of this conjunction of phrases here is that body-snatcher was beginning to attract powerful currency; this potency would start to underpin and describe Māori attempts at striking a spiritual equilibrium within their own culture. It would not be until 8 September 2007 that this newspaper would attempt an investigation which appeared to involve direct speech from both sides.

Body-snatching and all its variations, including “snatched body”, the unhyphenated “bodysnatching” and so on, continued to be widely used in the remainder of the articles dealing with James Takamore. It is beyond the scope of this article to deconstruct the context of these terms within the media; however, it is safe to state that the term started to figure more prominently when the Takamore case was joined by those of Tina Marshall-McMenamin and Ivy May Ngahooro (who was Pākehā [New Zealander of European descent]). The phenomenon became one which highlighted cultural mismatches under the rubric of “body-snatching”. The term was quickly becoming the established vernacular for different sets of events involving different whānau (extended families), hapū (sub-tribes) and iwi (tribes). It became a common rejoinder that the only solution would be one sourced in law, as there was apparently a current lacuna in the law which allowed the despicability of body-snatching to take place.<sup>2</sup>

2. Dr Wallace Bain, Acting Chief Coroner as at 10 March 2008, noted that the law was ineffective in dealing with cases where bodies had been claimed, and proposed that coroners be notified of all deaths and have exclusive jurisdiction over the custody of the dead bodies (Coroner proposes ‘body snatching’ law change, 2008). The coroner would then determine who could have access to the body until its release.



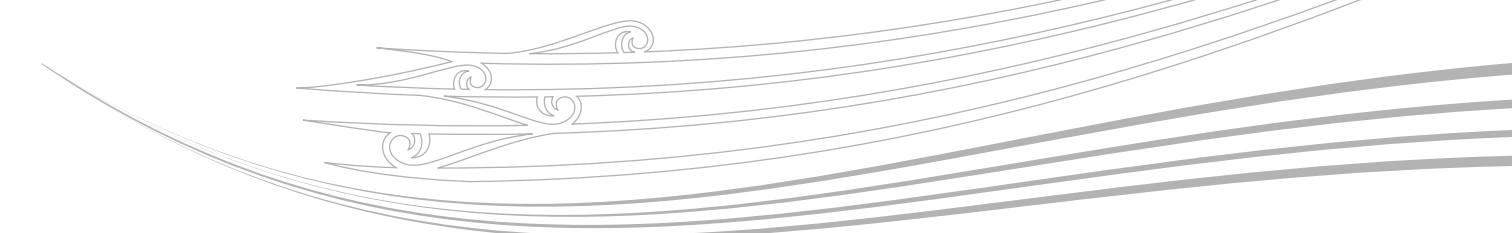
## The sensationalism of the term

The term body-snatching is rarely read through literal, dispassionate eyes. The phrase involves a hint of desecration. This connotation is borne out in the media, with such comments as "... it's the lowest of the low to essentially steal human remains from loving family" (Law limited in body-snatching cases, 2008). Within the sensationalism of this terminology resides the immoral. "Snatching" hints at a forceful taking, a quick and hasty assumption of something. Moreover, where a thing could be taken with negotiation in mind, and with the power of reasonableness infusing this taking, snatching appears to evoke a unilateral taking. Where reason is absent then the taking of the thing is seen to be without proper form and without careful consent from the side initially holding the thing. Compounded with "body", which itself is a culturally contestable term, 'snatching' assumes a touch of connivance. In the use of this term a subterranean deprivation of personality occurs; the body is given away as being a thing and the thing can be moved from one sphere to another.

## The phenomenon of body-snatching in the West

Snatching bodies, in fact, has occurred in the West for millennia. The epoch spanning 300–200 BC, to start with, was an unfortunate one for criminals, whose bodies were often tendered for operations. Herophilus and Erasistratus figured highly in these times as major proponents of vivisection and dissection. They discovered various functions of the nerves, circulation and the eyes (Singer, 1957), mostly in their experiments with cadavers, but also often with live criminals. Much later, the Roman scholar Celsus described the phenomenon of vivisection in these early times: criminals were reined in "for dissection alive, and contemplated, even while they breathed, those parts which nature had before concealed" (Persaud 2002, cited by Mika 2005, p.14). These experiments, obviously, occurred against the will of the criminals and involved what the historian Tertullian, in the case of Herophilus, described as "[a hatred of] mankind for the sake of knowledge" (Persaud 2002, cited by Mika 2005, p.14).

In general, Christianity and the collapse of the Roman Empire in the early Middle Ages saw a concomitant decline in the practice of human dissection (Nutton, 1996) and dead bodies were more likely to be left alone. The Roman Catholic church's strictures against human dissection were more prohibitive in a specific sense than widely injunctive; dismemberment of slain crusaders' bodies was ceased, for instance, and the edict *Ecclesia abhorret a sanguine* (*The church shrinks from blood*; Porter, 1997) proclaimed it was wrong for a cleric of the church to be involved in blood-shedding. Prayer was the standard cure-all and illness was ascribed to a spiritual realm. Sometimes illness could be caused by some intervention of God, sometimes from the intervention of Satan and his minions. Frequent epidemics of smallpox and the bubonic plague were believed to be the result of God's wrath (Porter, 1997). At the same time, any hope of salvation relied on the body being kept intact. It could not be fragmented or dismembered. According to Walter (1996, p. 114) "resurrection had to involve the whole body. Fragmentation of the body was a symbol of hell." The limitations placed on human dissection meant that



medical students had to rely on the (now) notoriously unreliable works of Galen. The powerful Roman Catholic church actively supported Galen's works (Singer, 1957), which relied on the dissection of animals, the tissue of which often bears little resemblance to that of humans.

### **Body-snatching acknowledged**

It would not be until 1543, when Belgian anatomist Andreas Vesalius completed *De Humani corporis fabrica, libri septem* [*On the structure of the human body, in seven books*], that the age of corpse dissection would gain respect. Vesalius would recover corpses at night (Goddard, 2003) and would tell students to take note of the least healthy patients so that the students could prepare to recover them when they finally died. Legend has it that he would sleep at night with the corpses in his bedroom—partly to avoid persecution by the authorities but also to perform dissections when he felt the need. His works would much later come to be described as perhaps the greatest contribution to the area of anatomy (Castiglioni, 1958).

Until the 18th century there were discrete attempts to assume possession of the corpse for the advancement of medical science. The 18th century itself grew to become fascinated with pathological anatomy and bodies were procured for the few dissections which took place in Britain within the private houses of medics; Saint Thomas's hospital had a dissecting room by 1780 but, in general there was still a sense that the body had to be kept intact. However, the demand for corpses for dissection soon outstripped the number, as legally only the bodies of criminals could be given to science, and bodies were procured illegally at any cost. The chief method was to dig them up as soon as possible after burial (Mika, 2005). This disturbing time was a lucrative one for "resurrectionists", and it reached its zenith when two unsavoury characters, Burke and Hare, were alerted to police for killing would-be cadavers before providing them to the Edinburgh Medical School. It was estimated that these two resurrectionists may have murdered 16 people (Porter, 1997). In a macabre twist, Hare gave evidence against his colleague, Burke, who was executed and, perversely, given to Edinburgh Medical School for anatomical research.

Body-snatching was also occurring in the USA. One particularly prominent instance is the New York Riot of 1788, which lasted three days and occurred after some children, peering into the Society of the Hospital of the City of New York, saw medical students dissecting various cadavers—one of which was the children's dead mother (Walker, 2000). A mob of 5000 soon resulted, which stormed the hospital and could only be suppressed by the military. Other regular instances particularly involved Afro-Americans (Walker, 2000) and Native Americans (Farrell, 1998), who, it was generally thought, were less capable of resistance.



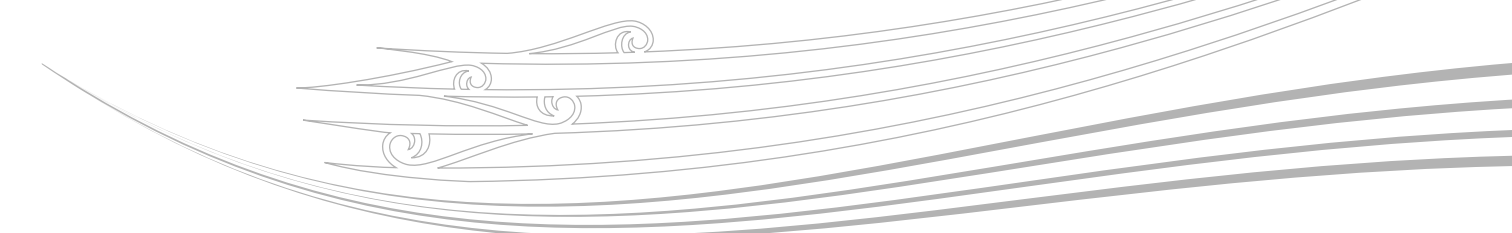
## The legalising of body donation

With the impetus of those recent events, and because of Burke and Hare in particular, the practice of body donation was finally legalized pursuant to the Warburton Anatomy Act 1832 in Britain and the Anatomy Act of 1831 in Massachusetts. Unclaimed bodies could be handed over to anatomists; consequently the body-snatching trade ended. However, it was not until Sir Jeremy Bentham demanded the preservation of his own body in his will, was preserved in a wooden cabinet called his Auto-icon, and was donated to the University College London in 1850, that the stigma of donation was overcome. Thus pauper status was still generally attached to body donation; while the Warburton Anatomy Act in Britain did end predation by snatchers, allowing more well-heeled classes to give their bodies over to science, the donated body was still thought of as largely being less fortunate.

### Can the law snatch bodies? Case study: Coroners Act 2006

The donation of body parts is one aspect of a contested view of the body in the West, and its legalisation in Britain and the USA with the Warburton Anatomy and Anatomy Acts, respectively, shows that religion, politics and philosophy have colluded with the body as a central focus. While it is not safe to say that the activities of anatomists and lawmakers necessarily represented the general populace (there were, after all, a number of religious detractors to the donation of body tissue), the retention of the body by the State to ensure that a proper explanation could be provided for a death, on the other hand, appears always to have been legal. The State has consistently deemed it necessary for unusual deaths to be accounted for. It is out of this necessity that the office of the coroner arose.

There are of course numerous laws which have always allowed for the detention of the *living* body: those dealing with criminal acts and mental health are foremost among them. Yet the law has shown itself to be remarkably timid when dealing with the *dead* body—due, as we have seen, to an historical apprehensiveness towards the spiritual and legal significance of the dead body. The coroner exemplifies a significant exception here, as he—and in the early history of the Office of the Coroner, the coroner was always male—was sanctioned from early times to retain the dead body. The label ‘coroner’ with its full hint of office first appears from pre-Norman times (Knight, 2007). However, coroners, as they are commonly known today, originate from the times of Richard the Lionheart (1157–1199). Article 20 of the Articles of Eyre, dating from September 1194, empowered the Office of the Coroner to “keep the pleas of the Crown” (Knight, 2007) and to provide a local county officer to ensure that the Crown’s financial integrity was preserved during criminal proceedings. To “keep the pleas” differed from “holding the pleas” which meant to actually hear pleas and to pass sentence (Knight, 2007), a task assigned solely to judges who presided over Assize Courts, although Knight asserts that coroners and sheriffs did hold the pleas for some short duration after the coroners’ inception.



Through to medieval times, in fact, the coroner's role was quite broad and he could become involved in many aspects of the complicated legal system. The main role, though, was to investigate sudden deaths. Investigating murder, manslaughter, accidental and natural deaths and suicide was his domain, although finding out relevant criminals was not his concern (Knight, 2007). The process around notifying the coroner of a death to be investigated, or even raising a *hue and cry* to hunt for a murderer, was a fraught one and involved adhering to rules. Deviating from these rules proved expensive, so that it was not uncommon for the *first finder* to actually ignore the dead body or else to drag it to another village (Knight, 2007). Locals had to guard the body, often for many days, until the coroner arrived so that their village was not stung financially for diverging from the rules of holding the body until the coroner could investigate.

With a growing concern around poisons, together with poor medical investigations into some murders (The Coroners' Society of England and Wales: A brief history, 2007) in the 19th century, the coroner's role became more narrowly focused on determining the circumstances and medical causes of deaths that were violent, sudden and unnatural. Therefore there remained an overlap with the more ancient role of the coroner but subsequent legislation meant that the coroner was no longer required to focus on revenue. It is this central role that survives, although the ways in which the coroner may carry this role out have changed; in New Zealand, substantial modifications to the rules which dictate the coroner's behaviour have recently been enacted, particularly in relation to how the coroner, fundamentally speaking, may relate to the body.

### **Previous coroner legislation in New Zealand**

That Māori have been adversely affected by the law is well documented, and is an understated and self-evident assertion. Various laws have imposed individualized land title, have explicitly and subtly prevented Māori from carrying out their healing practices, and have defined them as criminals or as schizophrenics in extravagant numbers. The Coroners Act 1988 arguably just carried on the colonizing mission with a specific focus on helping to redefine and retain the dead body. There was no counter to or even relief from its provisions. Pahl (1993) cites a list of incidents involving antecedents of the current Coroners Act which one might recoil from instinctively but which were not preventable by invoking other law. Specifically involving Māori<sup>3</sup>, and involving the unnecessary removal of tissue, these incidents include: the removal of a heart from a baby that died of cot death; the removal of organs from an elderly lady without permission from family members; part

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3. In one appearance that I made at an inquest I was disturbed at how the Coroners Act 1988 was not able to cope with tikanga Māori (Māori customs; correct practices) at all levels. This inquest involved the death of an elderly Māori woman who was released by a junior doctor. This woman was taken to a marae, and the Coroner ordered her retrieval from the marae as her death had to be investigated. Police uplifted her body from the marae. At this very early stage, the Coroners Act 1988 would not take into account the wishes of the family, and the postmortem was performed.





of the brain from someone who died of lung cancer; and the heart from a person who died in a mental hospital. The Law Commission (1999) cites another important example:

The deceased, a Māori, died in 1992 as a result of head injuries sustained in an altercation. The day after the death, the deceased's spouse was advised that the body was being held for a post-mortem .... The next day (two days after the deceased's death), the funeral directors were advised that the body could be collected. On arrival at the mortuary, however, they were told by a Police Officer involved in the investigation into the cause of death that the brain of the deceased was being retained for between 1–14 days. The funeral director passed this information on to the family. (pp. 6–7)

The family requested a meeting with the coroner who declined, and said that the brain was being examined for defence purposes for a trial. The family finally obtained the brain but only after legal proceedings.

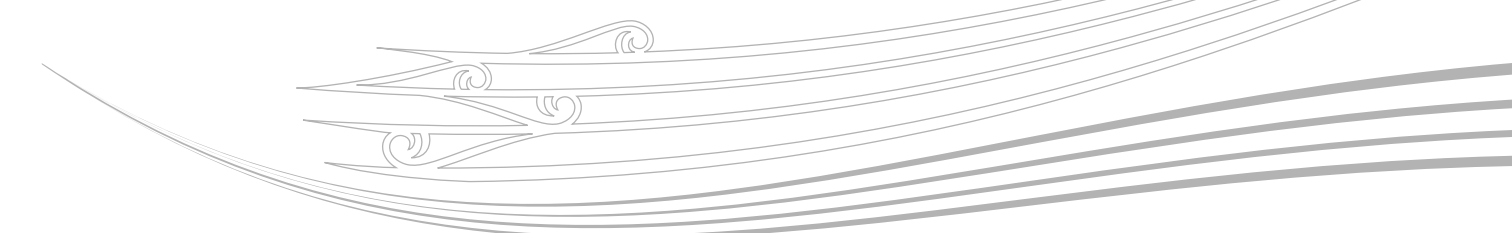
It would have been a plausible refrain that those dark times had been left behind in favour of a more enlightened epoch if the discovery of 1,300 babies' hearts at Greenlane Hospital (Johnston & Mold, 2002) had not occurred. Exactly how many of these babies were Māori is uncertain, and some of these cases involved the Human Tissues Act 1964 as well as the Coroners Act 1988. Fundamental flaws in the legislation demanded a review of relevant legislation which, of course, included the Coroners Act 1988.<sup>4</sup>

The 1988 Act authorized the coroner to order a post-mortem, although the 1988 Act signalled a move away from an automatic demand for post-mortems (Wallace & Johnson, 1996). The coroner was able to still authorise them, pursuant to section 8, after having attached such weight as was necessary to various criteria including ethnic origins, social attitudes or customs, attitudes of those closely associated with the body and whether those associates found post-mortems offensive, and whether there were any customs which required that the body be returned as soon as possible after death. How much weight was to be attached to these criteria depended on the case before the coroner and was therefore a discretionary activity. Section 9 of the 1988 Act authorized the coroner to direct a post-mortem 'forthwith' for those who had "the ethnic origins, social attitudes or custom, or spiritual beliefs" which directed that the body be returned to the family without undue delay. As soon as possible *when the post-mortem was authorized* the coroner had to take all reasonable steps to notify the family that a post-mortem would take place, together with reasons for the authorisation. The coroner was not required to notify families of the post-mortem *prior* to its execution. When a post-mortem was to occur, the coroner was able to

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4. The 1983 Working Party on Delays in the Release of Bodies for Burial noted additionally that there were concerns around the practices under the 1951 Act, in particular the extent of the delays in releasing the bodies for burials and also the nature of post-mortem examinations themselves. On the strength of these findings the New Zealand Government legislated for the Coroners Act 1988 (Law Commission, 1999).





direct that it be limited; however, this occurred rarely. Pursuant to section 14, as soon as the post-mortem was completed, the coroner was to authorize the disposal of the body as soon as he or she believed that the body no longer had to be retained.<sup>5</sup>

Although there was no right under the 1988 Act to remove body parts during a post-mortem, there was conversely no provision expressly forbidding this practice either. The right to possession of body parts was unclear if they were removed. Although the Department of Justice developed forms which the coroner could use whenever body parts were removed and which would then be sent to families (Law Commission, 1999), there was no provision in the 1988 Act to require them to use the forms. This omission may have stemmed partially from the fact that the pathologist performing the post-mortem did not have to tell the coroner that they had removed body parts. In turn, there was no statutory requirement for the coroner to notify families that body parts had been removed (Thomas, 2002). Just as disturbing for Māori, the 1988 Act did not require the body parts to be replaced back within the body. Note also that the Coroners Act 1988 took priority over the Human Tissues Act 1964, where the Code of Health and Disability Services Consumers' Rights directs that the coroner must consent to the removal of organs before a post-mortem occurs. As at 1999, despite the lack of statutory protection around body parts, hospital provision went some way in providing for the regulation around their removal. Health Waikato, for instance, directed that no organs or tissue were to be removed if the family had not first been notified (Ministry of Māori Development, 1999), and both the coroner and the pathologist signed a form which stated that all parts that had been removed were replaced. Pathologists in Christchurch were to advise if they had retained body parts.

No provision existed under the 1988 Act for families to remain with the body either before or during a post-mortem, although section 10(3) allowed for a doctor to be present at a post-mortem as a result of a person's application. The doctor would attend as the person's representative.

## **Coroners Act 2006**

The new Coroners Act brings into stark relief some of the huge shortcomings of its immediate predecessor. While it was still in Bill form, Dr Paul Hutchinson cited the Greenlane Hospital heart debacle and noted that it provided some of the momentum for more thorough informed consent processes around post-mortems, processes which until then had been less than satisfactory (Coroners Bill – In Committee, 2006). Dr Jackie Blue continued by noting the express provision in the 2006 Act for stillborn children, absent in the former Act, which allowed the coroner to release a stillborn child. Noting that the earlier lack of provision might have led to a diversity of practice in relation to the stillborn

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5. The coroner does not have a statutory right to retain the body or body parts, but is entitled under common law to 'possession and control of the body' (Law Commission, 1999, p.9) from the time that the coroner receives a report that warrants investigation until the completion of the inquest.



child, she also reiterated former speakers' applause of the provisions dealing with the return of body parts.

The provisions under the new Act for the return of body parts are indeed more compassionate and more in line with Māori views of the body.<sup>6</sup> However, there is still explicit authority for the coroner to retain the body. Section 44 seems at first glance to hold back the release of the body but only if parts or samples are to be retained. If the coroner is aware that the pathologist wishes to retain a body part or bodily sample then he or she may not release the body. The pathologist can retain the body part or bodily sample if it is, in their opinion, necessary for the post-mortem to occur, and also only if the amount of sample or part is "minute" (s48(2)(a)). If the pathologist feels that they have to retain the body part or sample and, presumably, the part or sample is larger than minute, then this must be authorized by the coroner, and the pathologist must tell the coroner in writing the reasons for retaining the part or sample, and for how long they wish to retain it. Additionally, under s48(2)(c) the pathologist may retain the part or sample if they have explained to relevant family members or associates that the pathologist wishes to retain the part or sample. Any objection means that the pathologist may not retain the part or sample. Importantly, however, the pathologist may still retain body parts even if permission has not been obtained pursuant to s48(2) but these must generally be returned upon the release of the body.<sup>7</sup>

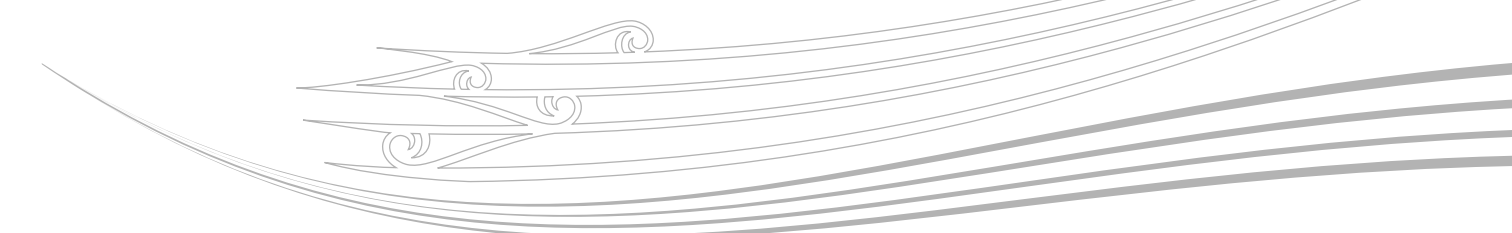
There are now prescriptive provisions which require the coroner to notify the family and other relevant associates of retention, and of their right to request the return of parts and samples. The coroner must specify that there is a significant matter 'in the carrying out of the duties and processes required by law to be performed or followed in relation to the death' (s23(1)) and must also tell the family that a part or sample is to be retained. A notice must be given to the family which identifies the part or sample, explains the reasons for the retention, give an indication of the duration of retention, and indicates, to the best of the pathologist's knowledge, whether the part or sample is likely to be destroyed during usage. The family members or other members have five days to request the part or sample back once it is no longer needed and if it has not been destroyed or would pose a health risk.

Whether a post-mortem occurs at all is still subject to a number of matters which the coroner must take into account. The new Act retains much of the language of the former 1988 Act: for instance, s32(f) still compels the coroner to consider "the desirability of

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6. The role of coroners and their demographic spread is also seen to be a more progressive step for the legislation. Coroners are now to be focused more on solely coroner work (they were formally employed part-time, often with little financial gain) and they will now undertake work in the provinces, thus enabling them to build relationships with communities and to help educate communities.

7. Section 53. Generally assumes importance when the sample or part has been destroyed, or if it is not practicable that the part or sample be reunified with the body. Under s54, if the return of the part or sample would endanger the health of the public, then the part or sample may be retained.



minimising the causing of distress to people who, by reason of their ethnic origins, social attitudes or customs, or spiritual beliefs, customarily require bodies to be available to family members as soon as possible after death” and, under s32(g) to consider “the desirability of minimising the causing of offence to people who, by reason of their ethnic origins, social attitudes or customs, or spiritual beliefs, find post-mortems of bodies offensive.” In some cases under the 2006 Act family members may object to a post-mortem being performed, specifically where there is no necessity for an immediate post-mortem and where there would be no contravention of law if a post-mortem did not occur. Family members and other relevant associates must exercise their right to object within 24 hours of having been notified that a post-mortem is to occur.

A significant amendment to the old legislation appears with section 25, which permits one or more people to remain with the body, or to view or touch the body while the body is in the coroner’s custody. This provision applies to members of immediate family, representatives, ministers and spiritual advisers. Note that the family of the dead person may request that a doctor, nurse or funeral director attend the post-mortem on behalf of the family if this is authorized by the coroner, in apparent deference to the needs of the family.

### **Māori view of the dead body**

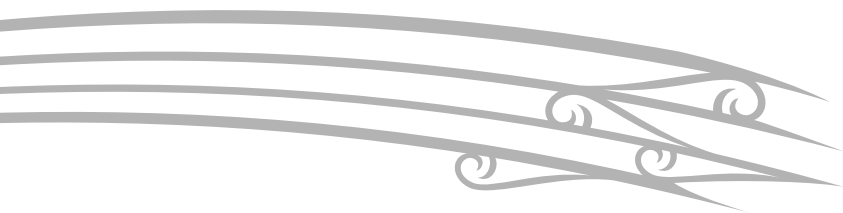
Māori have a view of the dead body<sup>8</sup> which is expressed in customs dealing with sending the spirit on to Hawaiiki, the original homeland of Māori, encouraging the living to visit the dead during the tangihanga (funeral rites), and reminding the living of particular obligations towards the dead. Generally Māori will not allow the dead person to remain alone; to do so would suggest that the dead person is indeed dead in a spiritual sense. Although there have undoubtedly been changes to the way Māori regard the dead body through colonization, customs around the preservation of the dead person’s spirit and the proper respect in sending the spirit on are still fundamentally adhered to. Such a belief highlights a difference between dominant Western discourses around death and those of Māori. Thus, while indeed the brain may have ceased activity and the heart stopped working, the person is still alive in a spiritual sense, is not completely dead and may not be tampered with.<sup>9</sup>

To Māori the body is tapu (sacred) and must be kept intact and whole. Such a belief accounts for the often vociferous reactions to the Western scientific, anthropological and antiquarian practices of retaining preserved heads as curios and measuring skulls to apparently ascertain intelligence. Indeed, reasons for contesting practices such as these

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8. One term for the dead body in Māori is tūpāpaku.

9. Admittedly the process of embalming could be seen to be a tampering with the dead body. Māori still have their dead embalmed by Western-trained embalmers, but there may be greater moves to resuming traditional and more culturally appropriate practices of embalmment, including drying techniques (Wikatene, 2006) and using earth on the body.

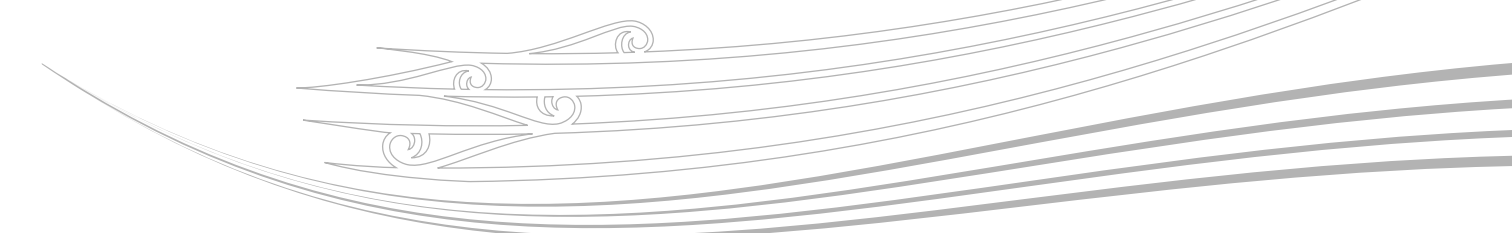


are not merely traditional; they also converge into the political sphere. Māori, along with other indigenous peoples, are still a source of intrigue to Western scientists, some of whom have been involved in obtaining Māori genetic material for study. See Gardiner (1997), for instance, for a description of the concerns which her hapū, Ngāti Hē and Ngāti Te Ahi, expressed around Selbourne Biological Services New Zealand Ltd's activities in conducting experiments on the genetic material of hapū members. The Human Genome Diversity Project, which sought to conduct investigations into "isolates of historical interest" (Posey and Dutfield, 1996, p. 164), also set about gathering genetic material from "endangered" indigenous peoples so that disease epidemiologies relative to white Northern American and European, and the origins of indigenous peoples, could be identified. Having heard of the experiences of other indigenous peoples who have battled the patenting of their genetic material, Māori are wary of the outcomes of the retention of body parts and samples for usage in experiments involving biological warfare and other general forms of testing. One well known example involves the Hagahai of Papua New Guinea. These people carry a human T-cell leukaemia virus which was of supreme interest to scientists. A patent was actually granted over a related unmodified human cell (Mika, 2005) but the National Institute of Health was later forced to withdraw the patent due to pressure from indigenous peoples, non-governmental organizations and foreign governments. Coupled with this guardedness is a concept of the body as a reminder and embodiment of its ancestors and the landscape, which makes the form of objectification envisaged by the retention of body parts, samples and genetic material hard to come to terms with.

While there have undoubtedly been rapid strides in progress with the latest Coroners Act legislation, the fact that the body may still be retained at all for post-mortems is unpalatable for many Māori. Granted, there is some benefit to be gained for family members by allowing a post-mortem to be undertaken, especially when the post-mortem can be carried out as swiftly and sensitively as possible; the family can gain some closure, and some medical afflictions which could affect other family members may only come to light when a post-mortem is completed. However, to assume that the Coroners Act 2006 is a complete rectification of past legislative wrongs and requires no further thought would be hasty. For instance, retaining the body parts and samples for any reason is a hindrance to any attempts at keeping the body whole. While the 2006 Act is obviously more aware of the needs of Māori in a number of areas, fundamentally the Act does not appear to inherently view the dead body in the same way that Māori would.

## **Conclusion**

This paper challenges the Western media, above all else, to consider its unbridled use of the term "body-snatcher". My belief is that the term, read in the historical context of the West and in the light of past and present coronial legislation, is a loaded one which cannot be immediately and uncritically attached to the practice of Māori claims to the



dead body. Advocates of “common sense” may try and argue that the distinction between claiming the body and snatching the body is semantic and that it is instantly a wrongful and harmful act; hence, “snatching” would be a far more appropriate term. Common sense, though, is itself culturally read. For Māori, it is far better to act on their own brand of common sense and to protect and respect the body by claiming it than it is to allow it to languish elsewhere, particularly given the historical association that anatomy and legislation have with the dead body.

Other commentators on the current Coroners Act may simply see the central issue as being one of consent. Although it is important that Māori establish their own fundamental guidelines for consent for the retention of the dead body—and these guidelines need to be flexible and avoid standardized, homogenized frameworks—the issue is more fundamentally about the ability of the law to remain inviolate from accusations of body-snatching, opening then onto a higher debate around the regard that the law has for the body. Is the Coroners Act 2006 capable of being called a “body-snatcher”? If so, is it less of a body-snatcher than its 1988 predecessor? Considered against the setting of Māori spiritual beliefs about the body, then there would appear to be no continuum, spanning *acceptable* body-snatching to *unacceptable* body-snatching. This does not mean, however, that the Coroners Act 2006 is merely setting out to snatch the body but in a nicer way. There is no doubt that coroners and pathologists are now required to operate in a way which is more understanding of Māori practices around the dead body. At some level, though, there needs to be a deeper philosophical contemplation of the cultural association with the dead body than the law itself can conceive of, so that more profound Māori associations with the body can find their voice.



## Glossary

### Māori

hapū  
Hawaiiki  
iwi  
marae  
Pākehā  
tangihanga  
tapu  
tikanga  
whānau  
tapu  
whānau

### English

sub-tribes  
the original homeland of Māori  
tribes  
Māori meeting complex  
New Zealander of European descent  
funeral rites  
sacred  
customs; correct practices  
extended families  
sacred  
families



## References

- Burial defies court order. (22 August 2007). *New Zealand Herald*. Retrieved 5 July 2008, from [http://www.nzherald.co.nz/section/1/story.cfm?c\\_id=1&objectid=10459161](http://www.nzherald.co.nz/section/1/story.cfm?c_id=1&objectid=10459161)
- Castiglioni, A. (1958). *A history of medicine*. New York: Alfred. A. Knopf.
- Coroner proposes 'body snatching' law change. (21 August 2007). *New Zealand Herald*. Retrieved 5 July, 2008, from [http://www.nzherald.co.nz/section/1/story.cfm?c\\_id=1&objectid=10497269&ref=rss](http://www.nzherald.co.nz/section/1/story.cfm?c_id=1&objectid=10497269&ref=rss).
- Coroners Bill – In Committee. (2006). *New Zealand Parliament*. Retrieved 5 July 2008, from [http://www.parliament.nz/en-NZ/PB/Debates/Debates/7/d/0/48HansD\\_20060801\\_00001574-Coroners-Bill-In-Committee.htm](http://www.parliament.nz/en-NZ/PB/Debates/Debates/7/d/0/48HansD_20060801_00001574-Coroners-Bill-In-Committee.htm)
- Family row sees body taken before funeral. (24 August 2007). *New Zealand Herald*. Retrieved 5 July, 2008, from [http://www.nzherald.co.nz/section/1/story.cfm?c\\_id=1&objectid=10459000](http://www.nzherald.co.nz/section/1/story.cfm?c_id=1&objectid=10459000)
- Farrell, C. (1998). *Coming home: The return of the ancestors*. Accessed 1 February, 2005, from [http://www.geocities.com/soaring/native\\_chi.html](http://www.geocities.com/soaring/native_chi.html)
- Foucault, M. (1978). *The history of sexuality, vol. 1: An introduction*. (R. Hurley, Trans.). Harmondsworth, UK: Penguin.
- Gardiner, D. (1997). Hands off our genes: A case study on the theft of Whakapapa. *Cultural and Intellectual Property Rights*, 2, 46–58.
- Goddard, S. (2003). A history of gross anatomy – lessons for the future. *University of Toronto Medical Journal*, 80(2), 145–147.
- Hopkins, J. (24 August 2007). Body Snatchers Delight! Police have fled the fight. *New Zealand Herald*. Retrieved 5 July, 2008, from [http://www.nzherald.co.nz/author/story.cfm?a\\_id=7&objectid=10459485](http://www.nzherald.co.nz/author/story.cfm?a_id=7&objectid=10459485)
- Johnston, M., & Mold, F. (2002). Abortion twist in hospital heart row. *New Zealand Herald*, Retrieved 5 July, 2008, from <http://www.nzherald.co.nz/index.cfm?ObjectID=1090275>
- Knight, B. (2007). *Crowner: Origins of the Office of Coroner*. Retrieved 5 July 2008, from <http://www.britannia.com/history/coroner1.html>
- Law Commission. (1999). *Coroners: A review*. Wellington: Law Commission.
- Law limited in body snatching cases. (2008). *tvnz.co.nz*. Retrieved 5 July. 2008, from <http://tvnz.co.nz/view/page/423466/1622273>.
- Mika, C. (2005). *When the Gaze meets the gaze*. Unpublished master's thesis, Te Whare Wānanga o Awanuiārangī, Whakatāne.
- Ministry of Māori Development. (1999). *Hauora o te tinana me ona tikanga*. Wellington: Ministry of Māori Development.
- Nutton, V. (1996). The Rise of Medicine. In Porter, R. (Ed.), *Medicine* (pp. 52–81). Cambridge: Cambridge University Press.





- Pahl, S. (1993). Removal of body parts: The legal position. *New Zealand Law Journal* 144, 144–148.
- Porter, R. (1997). *The greatest benefit to mankind: A medical history of humanity from antiquity to present*. London: Harper Collins.
- Posey, D., & Dutfield, G. (1996). *Beyond intellectual property: Toward traditional resource rights for indigenous peoples and local communities*. Canada: International Development Research Centre.
- Singer, C. (1957). *A short history of anatomy & physiology from the Greeks to Harvey*. New York: Dover Publications Inc.
- The Coroner's Society of England and Wales. (2007). *A brief history*. Retrieved 5 July, 2008, from <http://www.coronersociety.org.uk/wfBriefHistory.aspx>.
- Thomas, C. (2002). *Should the Law allow sentiment to triumph over science?* Unpublished discussion paper, Massey University, New Zealand. Retrieved 5 July, 2008, from <http://www-accountancy.massey.ac.nz/docs/Discussion%20Paper/210.pdf>
- Wallace, M., & Johnson, S. (1995). *Health care and the law*. Wellington: Brookers Ltd.
- Walter, T. (1996). *The eclipse of eternity*. London: Macmillan Press Ltd.
- Wikatene, E. (2006). He kaha tō te ao, he kaha anō tō te pō. *MAI Review* 1. Available online at [www.mai.review.ac.nz](http://www.mai.review.ac.nz).